IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.Nos.739 of 2000 to 742 of 2000

M.M.T.A. Limited represented
by its Deputy General Manager
R.S.Balasubramaniam .. Appellant/Complainant
in all the appeals

vs.

1. Karthik Fisheries P Ltd
2. N.K.Kumar .. Respondents/Accused
in all the appeals.

These appeals are filed against the Judgment dated 09.06.2000, in C.C.Nos.5447 of 1995, 6331 of 1995, 8726 of 1995 and 8727 of 1995 respectively on the file of the Court of VII Metropolitan Magistrate, G.T.,Madras.

For Appellant : Mr.A.Raghunathan,
Senior Counsel
for Mr.P.Vijayan

For Respondents : Mr.S.Suresh
(Legal Aid Counsel)

COMMON JUDGMENT

These appeals arise out of a common Judgment rendered by the learned VII Metropolitan Magistrate, G.T. Madras in C.C.Nos. 5447/1995, 6331/95, 8726/1995 and 8727/1995 respectively. The complainant is the appellant herein in all the appeals. Both complainant and the accused are one and the same in all the appeals.

2. The complainant M.M.T.A. Ltd preferred these private complaints under Section 200 of Cr.P.C, for the offence punishable under Section 138 of the Negotiable Instruments Act. In the complaiants, the complainant would state that the transactions entered into between the complainant and the accused ie., to finance, the accused in connection with his export trade, as on 3.1.1995 a sum of Rs.2,69,19,268 is due from the accused to the

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complainant and that after realising a sum of Rs.1,35,45,3000, the balance inclusive of interest comes to Rs.1,84,00,000/- and that to discharge the said subsisting debt, the accused had drawn four cheques in favour of the complainant on 20.6.1995 for a total sum of Rs.2,00,00,000/- and when the cheques were presented in the bank, they were dishonoured. A statutory notice was issued to the accused as contemplated under Section 138(a) of the Negotiable Instruments Act. Since the accused has failed to repay the said amount within 15 days to complaintant, he has preferred this complaint.

3. The complaint was taken on file by the learned Judicial Magistrate and on appearance of the accused, on summons copies under Section 207 of Cr.P.C were furnished and when the offence was explained to the accused he pleaded not guilty.

4. Since the accused as well as the complainant are one and the same in all the four cases, the learned Judicial Magistrate has conducted a joint trial and recorded the common evidence in all the four cases.

5. On the side of the complainant, P.Ws 1 to 3 were examined and Exs P1 to P11 were marked. The learned trial Judge has marked all the four cheques as Ex P5. The cheque connected with C.C.No.8726 of 1995 is for Rs.50,00,000/-. Rs.1,00,00,000/- cheque relates to C.C.No.8727 of 1995 is also marked as Ex P5. The cheque for Rs. 25,00,000/- is connected with C.C.No.6331 of 1995 is also exhibited as Ex P5. The cheque for Rs.25,00,000/- connected with C.C.No.5447 of 1995 is also marked as Ex P5.

6. After going through the oral and documentary evidence let in before the Trial Court, the learned trial Judge has come to a conclusion that the complainant has failed to prove the guilt of the accused and consequently, acquitted the accused. Against the findings of the trial Judge, the complainant has preferred these appeals.

7. Since no one has appeared for the accused, even after services of notice, Mr.S.Suresh , Advocate is appointed as Legal Aid Counsel to defend the accused. When the incriminating circumstances were put to the accused he denied his complicity with the crime.

8. Now the point for determination in these appeals are whether findings of the learned trial Judge in C.C.Nos.5447 of 1995,6331 of 1995, 8726 of 1995 and 8727 of 1995 is perverse to warrant any interference from this Court?

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9. Heard Mr.A.Raghunathan, Senior Counsel appearing for the appellant and Mr.S.Suresh, learned counsel appearing for the respondent and considered their rival submissions.

10.The point:-

The learned Senior Counsel appearing for the appellant would contend that the learned trial Judge has acquitted the accused on two grounds. One is that the complainant has failed to prove that there was a legally enforceable debt in existence on the date of drawel of Ex P5 (series) cheques and the second point, on which the learned trial Judge has based his finding is that the complainant has failed to produce the memorandum of understanding and also Exs P3 and P4 were sent by the accused Company.

10a) On the side of the complainant, P.Ws1 to 3 were examined. According to P.W.1, the complainant there is an agreement between the complainant and the accused in respect of the export business conducted by the accused and as per the agreement between the parties, the complainant had advanced a loan for the purpose of conducting the export business by the accused and that in this regard, a sum of Rs.2,69,00,000/- was due from the accused to the complainant. P.W.1 would admit that the accused had discharged the said loan partially to the tune of Rs.1,34,00,000/- and as on April 1995, the amount due inclusive of interest from the accused comes to Rs.1,84,00,000/- and only to dischaerge further the said debt of Rs.1,84,00,000 Ex P5 (series) cheques were drawn by the accused and the said cheques were sent along with ExP4 letter dated 20.6.1995 accompanied with Ex P3 another letter on the same date. Both Exs P3 and P4 ,it has been specifically stated that the memo of understanding as on 20.6.1995 as per the accounts maintained by the accused is Rs.1,87,00,000/-. Both the letters have been addressed to the Chief General Manager of the complainant company. The learned trial Judge has held that even according to the complainant, the amount due to the complainant from the accused was Rs.1,84,00,000/- only but the total amount of four cheques(EX P5 series) comes to Rs.2,00,00,000/- and that the complainant has failed to prove that Ex P5 (series) cheques were issued for not a legally enforceable debt on the date of the drawer of those cheques. The learned trial Judge has turned down the claim of the complainant.

10b) Per contra, the learned counsel appearing for the respondent would contend that one Kumar has signed in Exs P3 and P4 and the accused is in no way connected with Exs P3 and P4 but this contention of the learned counsel for the accused cannot be upheld because Exs P3 and P4 were not denied by the accused in his reply notice. On the other hand, Exs P3 and P4 are in the letter head of the accused and one N.K.Kumar has signed in those letters only on

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behalf of the Karthik Fisheries Private Limited, the accused herein. To controvert the evidence of P.W.1 no witness was examined on the side of the accused to show that Thiru N.K.Kumar is not the Managing Director of the accused Company Karthik Fisheries Private Limitied. Even at the time when incriminating circumstances were put to the accused under Section 313 Cr.P.C., the accused has not denied having sent Exs P3 and P4 along with Ex P5(series) cheques to the complainant.

10c) According to P.W.1, the amount due to the complainant as on 3.1.1995 was Rs.2,69,00,000/-. Only to discharge the said amount, Ex P5(series) cheques were drawn by the accused for a total sum of Rs.2,00,00,000/-. This fact was also mentioned in Ex P8 notice dated 17.10.1995 issued by the complainant to the accused. Under Section 138 of the Negotiable Instruments Act, if any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque, is liable to be prosecuted under Section 138 of Negotiable Instruments Act. The presumption under Section 139 of the Negotiable Instruments Act is that only for a valuable consideration, the cheques were drawn by the accused unless the contrary is proved. Admittedly the cheques were signed by the accused. So the presumption is that only for a valuable consideration passed, the cheques were drawn by the accused infavour of the complainant.

11. The learned senior counsel appearing for the appellant relying on M.S.Narayana Menon @ Mani-vs- State of Kerala and another(2006(3)CTC 730) and contended that under Section 138 of the Negotiable Instruments Act, the standard of proof is preponderance of probabilities. Inference of preponderance of probabilities can be drawn not only from materials on record but also by reference to circumstances upon which person relies.

11a) Per contra, the learned counsel appearing for the respondent is also based his reliance on the same Judgment which at paragraph 45 reads as follows:

> "In Hiten P.Dalal.v.Bratindranath Banerjee, 2001(3)CTC 243: 2001(6)SCC 16,a 3-Judge Bench of this Court held that although by reason of Sections 138 and 139 of the Act, the presumption of law as distinguished from presumption of fact is drawn, the Court has no other option but to draw the same in every case where the factual basis of raising the

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> presumption is established.Pal.J, Speacking for a 3-Judge bench, however, opined:
> "Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter, all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non -existence of the presumed fact. In other words, provided the facts required to form the basis of a presumption of law exist, no discretion is left with the Court but to draw the statutory convlusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and providng the contrary. A fact is said to be proved when," after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". Therefore, the rebuttal does not have to be conclusively established but such evidence must be adduced before the Court in support of the defence that the Court must either believe the defence to exist or consider its exisitence to be reasonably probable, the standard of reasonability being that of the "prudent man".

But there cannot be two opinion as to a finding which can be established only on the basis of proof. Even though the accused herein would contend that Exs P3 and P4 were not signed by the accused and hence on the basis of Exs P3 and P4 no adverse inference can be drawn against the accused. But even in his answers under Section 313 Cr.P.C. for questioning or in his reply notice, the accused has not stated anything about Exs P3 and P4 to the effect that they were sent by him on behalf of the accused. Under such circumstances, I am of the view that the complainant has proved the guilt of the accused under Section 138 of the Negotiable Instruments Act beyond any reasonable doubt. The learned trial Judge without appreciating the evidence properly has acquitted the accused which is perverse in nature warranting interference from this Court. Point is answered accordingly.

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12. In fine, these appeals C.A.Nos.739 of 2000, 740 of 2000, 741 of 2000 and 742 of 2000 are allowed setting aside the Judgment in C.C.Nos. 5447 of 1995,6331 of 1995, 8726 of 1995 and 8727 of 1995 on the file of the Court of VII Metropolitan Magistrate, G.T.Madras. The accused in all the four cases are convicted and sentenced under Section 138 of Negotiable Instruments Act to undergo one year rigorous imprisonment and a fine of Rs.5,000/- is imposed on A1 and a fine of Rs.5,000/- is imposed on A2 (total fine amount is Rs.10,000/-) in each case in default to undergo three months simple imprisonment in each case. The sentence to run concurrently. The learned trial Judge is directed to secure the 2nd accused to undergo the sentence. This Court records the appreciation of service rendered by Mr.S.Suresh, Legal Aid Counsel. His remuneration is fixed as Rs.3000/- in each case to be paid by the State Legal Services Authority.

sg

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The VII Metropolitan Magistrate
G.T. Madras

2. -do- Through The Chief Judicial Magistrate,
Egmore, Madras 8.

3. The Secretary the state Legal Services Authority,
Chennai 104.

+ 4 ccs to M/s. S. Suresh, Advocate SR. Nos. 14987, 14958, 14959, 14960

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